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THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

—
No. 76
—

REBECCA MAISENBERG,

Petitioner,
vs.

UNITED STATES OF AMERICA,

Respondent.

OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

—
BRIEF FOR PETITIONER
—

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BRIEF FOR PETITIONER

This is a denaturalization proceeding—the companion case to *Nowak v. United States*, October Term, 1957, No. 72. A single opinion for both cases was rendered on November 26, 1956 by the Court of Appeals and is reported at 238 F.2d 282.¹

¹ This opinion is included in the printed Appendix in the *Nowak* case (App., p. 145).

The opinion of the District Court is unreported but is included in the Appendix to this brief (App. p. 41).²

Jurisdiction

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Sec. 1254. Petition for writ of certiorari was granted on April 1, 1957.

Questions Presented

All of the questions before the Court in *Nowak*—with the exception of the application of *Jencks v. United States* (*Nowak* Brief, p. 94)—are presented here. Additionally, the Court is requested here to construe the meaning and the constitutional application to Petitioner of the denaturalization section of the Immigration and Nationality Act of 1952 (66 Stat. 166, 8 U.S.C.A. 1101, *et seq.*).

Statutes Involved

All of the statutes set forth in *Nowak* are involved here. Additionally, there is involved here the denaturalization provisions of the Immigration and Nationality Act of 1952 (66 Stat. 166, 8 U.S.C.A. 1101, 1451(a)):

“Sec. 340. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and

² “App. — ” refers to the printed Appendix filed with this brief.

canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively."

• • • • •

"(i) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act."

Statement

Petitioner was born in Russia in 1901 and came to this country in 1912 with her mother, sister and two brothers to reside with their father in New York City. In 1917 she married and in 1926 she and her husband moved to Detroit where they have lived ever since. Petitioner has no criminal record.

Petitioner was naturalized by the Federal District Court at Detroit on January 24, 1938.

THE PLEADINGS

This denaturalization proceeding was instituted in March, 1952 pursuant to the Immigration and Nationality Act of 1952. The Amended Complaint (App. p. 21) charges, in the language of that Act, that Petitioner's naturalization was procured "*by concealment of material facts and by willful misrepresentation*," in that the following statements made by her in the course of her naturalization in 1937-1938 were knowingly false:

- "(a) That she fully believed in the principles and form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country. This statement was made in Preliminary Form for Petition for Naturalization filed with the District Director Immigration and Naturalization Service, Detroit, Michigan, on or about June 30, 1937." (App. p. 38, Questions 22, 23 and 28.)
- "(b) That she was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government; that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of which she was a subject, and particularly to the Union of Soviet Socialist Republics. This statement was made in her Petition for Naturalization;" (See App. p. 39, paragraph 7.)

"(c) That she would support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion. This statement was made in open court in Oath of Allegiance, more fully set out in paragraph 5;"

The Complaint alleged that the above statements were false because the Petitioner was a member of the Communist Party of the United States from 1930 to the date of her naturalization in 1938 and she concealed this fact; and that during this time the Communist Party was an organization which "advocated or taught the overthrow by force and violence of the government of the United States," and that Petitioner "was familiar with and approved of the above teachings of the Communist Party."

Attached to and made a part of the Complaint is the affidavit of one Reuben Speiser (App. p. 26), who appears to be the same affiant and the affidavit is essentially the same in form as the affidavit attached to the *Nowak* Complaint. (*Nowak* Brief, App. p. 121.)

Petitioner moved to strike certain portions of the Complaint and the Affidavit (App. p. 29) as "irrelevant, contradictory . . . highly prejudicial and not capable of proper cross-examination;" or in the alternative to require more specific information concerning the "official records" referred to in the affidavit and the production of such as are referred to in the affidavit. This motion was denied.

Petitioner's Answer (App. p. 32) admitted execution and filing of the Petition for Naturalization, the taking of the oath and the grant of naturalization, but placed in issue all of the other material allegations of the Complaint.

The Answer also challenged the legal sufficiency of the affidavit of "good cause" to confer jurisdiction upon the Court. Additionally, it moved for dismissal of the Complaint on the ground that Section 340 (a) of the Immigration and Nationality Act (8 U.S.C.A. 1451(a)), under which this action is brought, on its face and as applied to Petitioner, is unconstitutional under the First and Fifth Amendments to the Federal Constitution.

THE EVIDENCE

The Government's theory at the trial was set forth in counsel's opening and closing remarks (Tr. Vol. I, pp. 6, 9-11; Vol. III, pp. 15, 23):³

Mr. Hamborsky: All right. We claim, first of all that she concealed a material fact. For example, on Question 28 of Government's proposed Exhibit I she answered "No" to the following question: "Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?" She answered "No."

We contend that she was a member of the Communist Party at the time that she answered that question "No"; that she knew what the Communist Party stood for; and that the Communist Party taught and advocated overthrow of this government by force and violence. Consequently, she concealed a material fact.

The Court: You have to show that she knew it.

Mr. Hamborsky: Well—

³ "Tr. —" refers to the typewritten transcript filed with this Court. It is in three volumes. Vol. I and II contain all the testimony. Vol. III contains the colloquy at the end of the trial. Since the pages are not numbered consecutively, in this brief we will refer to the volume, followed by the page number therein.

The Court (Interposing): Mere membership in it wouldn't be enough?

Mr. Hamborsky: I think you are right there, although as I say, the courts have not ruled on that particular issue (Tr. Vol. I, p. 6).

* * * * *

Mr. Hamborsky: The Government's position in regard to wilful misrepresentation is that when she petitioned for naturalization on October 22nd, 1937, that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, we claim that that was false in that she wilfully misrepresented that she would, and she took her oath with mental reservations, plus the fact that at the same time she was a member of the Communist Party, adhered to and recognized its aims and objectives, and that she could not be attached to the principles of the Constitution and well disposed to the good order and happiness of the United States because the inconsistency there is too great.

There is an impasse between being a member of the Communist Party and adhering to—and attachment to the principles of the Constitution. That those are the wilful misrepresentations in her certificate and at the time of her naturalization proceedings (Tr. Vol. I, pp. 10-11).

Six witnesses were called by the Government. Five of them identified the Petitioner as a member of the Communist Party in the pre-1938 period.*

Additionally, it was stipulated by counsel for the respective parties that two other non-resident witnesses, John

* The other witness, Baldwin, was permitted, over objection to testify as to the Petitioner's membership in the post-1943 period (Tr. Vol. I, 141, 142).

Lautner of New York City and Frank Meyer of Chicago need not be called;⁵ and that if called as witnesses by the Government, each would testify that he was "an active member and functionary of the Communist Party of the United States" from 1929-1950 and 1934-1945, respectively; and

"that it was their understanding, on the basis of their membership, training experience, and activities in the Communist Party of the United States and on the basis of documents, pamphlets and literature herein-after mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, that during the entire period of their membership the Communist Party of the United States advocated, taught and advised the overthrow of the government of the United States by force and violence" (App. p. 34). (Emphasis supplied.)

It was further agreed that the above stipulation and the documents listed therein would be received in evidence in lieu of the appearance of these witnesses.⁶

There is no evidence here that this Petitioner had ever read or was in any way familiar with the contents of any of these documents.

No evidence was offered by Petitioner.

THE OPINIONS BELOW

The Trial Court's opinion sustained the sufficiency of the "good cause" affidavit.

⁵ Each of these is a professional witness employed by or frequently used by the Government in such cases. (See "The Informer," April 10, 1954 issue of "The Nation.")

⁶ The documents are set forth in the Appendix (App., p. 35).

On the issue of concealment and misrepresentation, the entire holding of the Trial Court was as follows:

"The proof is similar to that found in the case of *U. S. v. Nowak* decided July 15th, 1955 by this court, and the court finds that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the Constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the Constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

"It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship."

The Order of Cancellation (App. p. 42) was entered on August 12, 1955.

The Court of Appeals rendered a single opinion covering this case and *Nowak*. In affirming the Trial Court, it held that all of the legal issues presented (except as to the sufficiency of the affidavit of good cause) "have been adjudicated adversely" to Petitioner by the prior opinions of this Court of Appeals. This reference is to that Court's prior decisions in the *Sweet*, *Charnowola* and *Chomiak*

cases, 211 F.2d 118 (1954), cert. den. 348 U.S. 817. However, naturalization in each of these cases had been granted under the 1940 Act and, as pointed out in Petitioner's Brief in *Nowak* (pp. 27-35), the qualifications for naturalization as set forth in the 1940 Act were different from those under the 1906 Act which is involved here.

ARGUMENT

Essentially the same questions and the same arguments apply here as are set forth in Petitioner's brief in *Nowak*. This is so because of the similarity of the Affidavit and the factual assertions relied on to support the charges in the Complaint; the similarity in the theory of the Government in the two cases; the identical nature of the proofs relied upon;⁸ and the opinion of the Trial Court.⁹

⁸ One factual difference in the charge is that, unlike in *Nowak*, it is not claimed here that Petitioner was specifically asked about Communist Party membership. This difference is inconsequential since in *Nowak* the Trial Court found that, notwithstanding the Government's claim there, no such specific inquiry was made.

⁹ The proofs in each case consist of the recollections of professional witnesses as to what was said in meetings, conversations and lectures which allegedly occurred fifteen (15) to twenty (20) years before, and at which Petitioner is alleged to have been present; and the "expert" opinions (Tr. Vol. I, pp. 15, 16) of three such witnesses—Nowell, Lautner and Meyer—concerning the teaching and advocacy of the Communist Party in the pre-1938 period. There is no showing that either of these last two "experts" ever saw or talked with Petitioner. Pertinent here is the comment recently made by the Court of Appeals for the Seventh Circuit (*Yiannopoulos v. Robinson*, 26 U.S. Law Week 2117) concerning the unreliability of two of the professional witnesses here, Nowell and Syrakis.

⁹ The Trial Court's findings here, as is shown in the above quotation from its opinion (*suprā*, p. 9) are even more general than in *Nowak*. If, as is pointed out in Petitioner's brief in *Nowak*, the findings there were too general to satisfy the criticism made by this Court in *Schneiderman v. United States*, 320 U.S. 118, at p. 129, then clearly the even more generalized findings here require a reversal.

Accordingly, Petitioner incorporates here by reference each and all of the pertinent arguments set forth in the Petitioner's brief in *Nowak*. But since this case, unlike *Nowak*, is prosecuted under the 1952 Act, it is necessary that we consider what, if any, impact this new Act has upon the legal arguments in *Nowak*.

I.

The Complaint in the present case is pursuant to Section 340(a) of the Immigration and Nationality Act of 1952 (66 Stat. 260; Title 8 U.S.C.A. 1451(a) which superseded and repealed the prior statute (The Nationality Act of 1940, Title 8, U.S.C. Sec. 738(a)). Under the 1940 Act the cancellation of a naturalization certificate was authorized "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." The 1952 Act authorizes "revocation and setting aside of the order admitting . . . to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by wilful misrepresentation."

Thus, the first change made by the new Act is the elimination of "illegal procurement" as an expressed ground for cancellation. But what, in practical effect, does this mean?¹⁰

Under the 1940 Act much confusion developed in the decisions of the lower courts as to the distinction between "illegality" and "fraud."¹¹ The situation is summarized,

¹⁰ We have been unable to find any judicial decision interpreting the significance of this statutory change. Government counsel advised the Trial Court (Tr. Vol. I, p. 18) that this is the first case to be tried under the 1952 Act.

¹¹ For an analytical discussion of lower court decisions prior to *Schneiderman* (*supra*), see *United States v. Kusche*, 56 F. Supp. 201 (D.C. Cal.).

we think, in the following comment from a recent analytical examination of the immigration laws:

"Naturalization was illegally procured if some statutory requirement needed to qualify the alien for citizenship was lacking when the petition was granted. Thus where the final hearing on naturalization was held in the judge's chambers instead of in open court as required by law, citizenship was illegally procured. However, other procedural irregularities were often considered of minor importance and were discounted as mere technical or clerical errors. Cancellation for illegal procurement was also granted where the alien's conduct previous to naturalization showed a lack of good moral character. In such cases revocation might have been based on fraud because the petitioner had failed to disclose conduct he knew to be illegal, but the Government by proceeding on the ground of illegal procurement avoided having to prove an intentional withholding of information."

Development in the Law Immigration and Nationality, 66 Har. L.R. 643, 719, 720.

Of similar import is the comment in 51 Mich. L. Rev., at page 892-896, and the *Report of the President's Commission on Immigration* (1953) at page 249.¹²

The meaning attributed by the decisions of this Court to the term "illegal procurement", however, seems clear. Citizenship is "illegally procured" wherever it is apparent from the record of the naturalization proceeding, or the

¹² Counsel for the Government expressed the view at the trial that the 1952 Act eliminates illegal procurement and that "concealment of a material fact or misrepresentation are just two elements of fraud." He disclaimed any intention to charge "illegality," relying upon a claim of fraud (Tr. Vol. III, pp. 13-14).

admission of the applicant, that some qualification essential to the authority of the naturalization court to act was non-existent at the time.¹³

Thus, in *Schwinn v. United States*, 112 F.2d 74 (CA 9th) aff'd, 311 U.S. 616, 61 S.Ct. 70, the attesting witnesses as to petitioner's residence, moral character and attachment swore falsely that they had known petitioner for five (5) years and could affirm his residence for that period. The District Court granted denaturalization because of illegality and fraud (112 F.2d at p. 75), though it made no finding that petitioner himself knew of the falsity of his witnesses' oath. On appeal, the Government did not press the charge of illegality and the Court of Appeals affirmed on the ground of fraud alone, notwithstanding it also expressed the view that proof of five years' residence by the oath of two subscribing witnesses was a "jurisdictional requirement." This Court, however, in its *Per Curiam* affirmance made it clear that "The judgment is affirmed on the sole ground that the certificate of citizenship was illegally procured." The dissent of Mr. Chief Justice Stone in *Schneiderman*, at p. 176, note 2, confirms this analysis of *Schwinn*.

To the same effect is *Johannessen v. United States*, 225 U.S. 227 (applicant admitted perjury of his attesting witnesses); *United States v. Ginsberg*, 243 U.S. 472, 37 S.Ct. 422 (citizenship illegally procured because of admitted absence of statutory residence requirements and failure to hold hearing in open court); *Maney v. United States*, 278

¹³ In his concurrence in *Schneiderman*, 320 U.S. at pp. 161-162, Mr. Justice Douglas said:

"Fraud connotes perjury, concealment, falsification, misrepresentation or the like. But a certificate is illegally, as distinguished from fraudulently, procured when it is obtained without compliance with a condition precedent to the authority of the Court to grant a petition for naturalization."

U.S. 17, 49 S.Ct. 15 and *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118 (illegality found because no properly filed certificate of arrival); *United States v. Thind*, 261 U.S. 204, 43 S.Ct. 338 (illegality because petitioner, admittedly a Hindu, was not eligible for naturalization); and *Luria v. United States*, 231 U.S. 9, 34 S.Ct. 10 (Petitioner's departure from the country shortly after his naturalization warranted statutory presumption that the requisite intent to reside here permanently did not exist at the time of naturalization).¹⁴

Thus, all of the "illegal procurement" cases in this Court have had two things in common: one, a failure, apparent from the naturalization record or by admission of the applicant, to satisfy some requisite held to be a necessary condition to the *power* of the naturalization court to act; and, two, in none of the cases was there a showing or finding that the petitioner himself was guilty of intentional wrongdoing amounting to concealment or misrepresentation.

But (as pointed out in *Nowak* pp. 45-48), even if the 1940 Act had not expressly authorized cancellation of judgments of naturalization when illegally procured, this result would follow under recognized common law principles; a judgment of a court which purports to act when it lacks the authority or power to do so always has been regarded as a nullity.

Thus, the elimination of "illegal procurement" in the 1952 Act has significance for the present proceeding only by

¹⁴ Illegality also was the sole ground before this Court in *Schneiderman* (*supra*), based upon the charge that petitioner had not "behaved as a man of good moral character attached to the principles of the Constitution." However, this Court did not expressly determine the legal validity of this charge to support "illegal procurement" since it found the evidence insufficient.

reason of the fact that it confirms the argument set forth in Petitioner's brief in *Nowak* (pp. 29-34).¹⁵

II.

The 1952 Act also drops "fraud" as a ground for denaturalization and substitutes "concealment of a material fact or wilful misrepresentation."¹⁶ On its face this statutory change poses at least three (3) questions having constitutional significance:

1. It might be argued that in thus stating the grounds for denaturalization under the 1952 Act, Congress has directed that a judicial decree be re-examined and set aside on grounds less than "lack of jurisdiction or the kind of fraud which traditionally vitiates judgments." (*Schneiderman, supra*, at p. 124.) Obviously, this new ground is considerably broader (and hence, more favorable to the Government) than the traditional concept of the kind of "wrongful conduct" (*Johannesen v. United States*, 225 U.S. 227, 243) required to justify equitable relief from a final judgment. (See 31 Am. Jur., Judgments, Sec. 653, *et seq.*, Cf. *Noble v. Union River Logging*, 147 U.S. 165, 13 S.Ct. 271.) For this new ground, on its face, does not contemplate any showing by the Government that the alleged concealment was intentional, or that the alleged misrepresen-

¹⁵ The Senate report on the 1952 Act (S. Rep. 1515 at p. 756, 81st Cong. 2nd Sess. (1950)) suggested that one purpose of the deletion of the reference to "illegal procurement" was to eliminate judicial conflict as to the *res adjudicata* status of naturalization proceedings.

¹⁶ The Senate Report (S. Rep. 1515, p. 756, 81st Congress, 2nd Sess. 1950) suggests that this change was intended to eliminate the "Judicial conflict as to whether fraud had to be extrinsic or whether intrinsic fraud would suffice" (51 Mich. L. Rev., *supra*, p. 893).

tation involved a material fact, or that what is relied upon as the wrongful conduct "really prevented the party complaining from making a full and fair defense." *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 43 S.Ct. 458, 464. All of these are elements heretofore regarded as essential to sustain a charge of fraud sufficient to justify the re-examination and setting aside of a final judgment. There is thus presented an issue with respect to Article III of the Constitution and the power of the Congress to invade the judicial function. Cf. *Muskrat v. United States*, 219 U.S. 346, 31 S.Ct. 250. This issue was left undetermined by the majority in *Schneiderman* (*supra*, at p. 124; but see the concurring opinion of Mr. Justice Rutledge).

2. "Concealment of a material fact" is a highly elastic concept, which gives enormous scope to the Immigration Service and the judiciary. "Concealment" presupposes a duty of communication. And where the claimed concealment involves matters of opinion and appraisal of political doctrine or assessment of constitutional rights in areas where even the Courts disagree (*Schneiderman, supra*, notes 29-31), a petitioner for citizenship must experience great difficulty in determining at his peril if such a duty exists. Again, what is and what is not "a material fact" (outside of the expressed provisions of the statute itself) also leaves a wide expansion for differing views, depending upon the time, the locale and the circumstances.¹⁷

¹⁷ "Wilful misrepresentation" is not limited in the statute to material facts; it can be said to embrace every fact considered important enough to be inquired of in the Petition for Naturalization. And since the Attorney General is empowered under Section 334(a) to prescribe what allegations must be made in the Petition, subject only to the limitation that they be "material to naturalization," the problem of what is and what is not material is unresolved.

In 1938, when Petitioner was naturalized, active membership in the Communist Party was not equated with lack of good moral character or attachment to the Constitution. The Party was a legal political party. But in 1953, when the present suit was commenced (or in 1955 when it was tried), the situation had changed. (See Appendices E and F, Petitioner's brief in *Nowak*.) What standards, therefore, are to be applied by a Court sitting in 1955 in arriving at what was material in 1938? Or is the judge to apply present-day concepts of materiality? If so, then it cannot be said here, as this Court said in *United States v. Luria* (*supra* at p. 24), that the denaturalization provision "does not make any act fraudulent or illegal that was honest and legal when done . . ." Moreover, what prior notice did such an applicant for citizenship have in 1938 that his then legal activity on behalf of a recognized political party would later be held to be wrongful conduct affecting his good moral character and attachment to the Constitution?

What emerges from even this cursory examination is that the statute, on its face, presents serious questions of unconstitutional vagueness;¹⁸ and this in an area where the Court has shown special regard for protection of political rights. See *Sweezy v. New Hampshire*, 77 S.Ct. 1203.

3. If, as we have suggested (*supra* p. 15), the 1952 Act provides for denaturalization upon grounds less than "lack of jurisdiction or the kind of fraud which traditionally vitiates judgments", a further question of constitutional fairness or unfairness is presented. For we have here something very much more than a mere change in rules of

¹⁸ The Fifth Amendment's prohibition of constitutional vagueness is not limited to criminal proceedings. See *Jordan v. De George*, 341 U.S. 223, 231; 71 S.Ct. 703 where the doctrine is applied to a deportation proceeding "in view of the grave nature of deportation."

evidence (Cf. *Luria v. United States*, 231 U.S. 9, at pp. 26, 27); rather what we have is something akin to a Bill of Attainder in violation of Article 1, Section 9 of the Constitution. (*Cummings v. Missouri*, 71 U.S. 277.)

Thus, at a minimum there is presented, by the *ex post facto* provision of the statute, a question of deprivation of vested rights in a manner not sanctioned by the due process clause of the Fifth Amendment. Petitioner was granted a judgment which, at the time of its rendition in 1938 was impervious to attack except for "illegal procurement" or "fraud". Valuable rights embraced in the package known as "citizenship" became vested. They can be divested only in accordance with due process.

Due process in 1938 required a showing of "illegal procurement" or the kind of fraud which traditionally voids a judicial decree. To provide now, as the 1952 Act does on its face, for the cancellation of these rights for something less than "traditional" fraud is a denial of substantive due process. Cf. *Noble v. Union River Logging Railroad Co.*, 147 U.S. 165, 13 S.Ct. 271.

It is not necessary, however, that we enlarge further upon the constitutional difficulties which the 1952 Act presents on its face. (See 51 Mich. L. Rev. at p. 895.) For it is obvious that each of these issues could be avoided by reading into the language of the 1952 Act a requirement that the Government establish each of the elements of traditional fraud. This, in effect, is what the Government's theory here undertakes to do, to establish "fraud" by proving in this case every element that it was required to prove in *Nowak*. This is recognized in the above quoted opinion of the Trial Court (*supra* p. 9) and conceded by the Government at the trial. Tr. Vol. 1, p. 9; Vol. III, p. 14.

Accordingly, the legal arguments made by the petitioner in *Nowak* on the failure of the Government to establish fraud as a matter of law are pertinent here.

III.

It remains only to consider whether the evidence here, in fact, establishes traditional fraud. Unlike the petitioner in *Nowak*, we assume for purposes of this presentation that the evidence sufficiently establishes Petitioner's membership in the Communist Party during the period immediately prior to her naturalization in 1938 and that she did not volunteer disclosure of such membership. The pertinent inquiry, therefore, is the sufficiency of the evidence relied upon here to show (a) the alleged illegal nature of the teaching and advocacy of that Party in that period; and (b) Petitioner's knowledge and participation in that advocacy.

No attempt is made here to summarize the brief testimony offered by the Government on these questions. Instead, we invite the attention of the Court to the printed appendix filed with and contained in the Petition for Certiorari herein, where this testimony is set forth verbatim.¹⁹ We submit that when the standards of proof discussed in Petitioner's brief in *Nowak* are applied to the evidence here, it is apparent that the proof here falls far short of the "clear, convincing and unequivocal evidence" necessary to establish each of the above elements of fraud.

¹⁹ This brief is being printed at public expense. Accordingly, we deem it inexpedient to reprint documents already before the Court in printed form.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN AND ROBB

By ERNEST GOODMAN and GEO. W. CROCKETT, JR.

Counsel for Petitioner

3220 Cadillac Tower

Detroit 26, Michigan

Detroit, Michigan

November 12, 1957



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APPENDIX

[fol. 2a] AMENDED COMPLAINT TO CANCEL CITIZENSHIP

(Filed July 20, 1953)

The United States of America, by Fred W. Kaess, United States Attorney for the Eastern District of Michigan, by Dwight K. Hamborsky, Assistant United States Attorney for said district, herewith presented its amended complaint under and pursuant to Section 340(a) of the Immigration and Nationality Act (66 Stat. 260; 8 U.S.C.A. 1451(a)), and respectfully represents:

1. That the said Rebecca Maisenberg was, prior to January 24, 1938, a native and citizen of the Union of Soviet Socialist Republics;
2. That the said Rebecca Maisenberg entered the United States on September 2, 1912, at New York, New York, and thereafter resided in the United States and now resides in the United States and in this judicial district, her last known place of residence being 2493 W. Philadelphia, Detroit, Michigan;
3. That on or about October 22, 1937, the said Rebecca Maisenberg filed Petition for Naturalization No. 111166 in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, under the general provisions of the Act of June 29, 1906 and Act of September 22, 1922, as amended;
4. That during the proceedings which led to her naturalization said Rebecca Maisenberg alleged under oath:
 - (a) That she fully believed in the principles and form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of [fol. 3a] existing government in this country. This statement was made in Preliminary Form for Petition for Naturalization filed with the District Director, Immigration and Naturalization Service, Detroit, Michigan, on or about June 30, 1937;
 - (b) That she was not a disbeliever in or opposed to organized government or a member of or affiliated

with any organization or body of persons teaching disbelief in or opposed to organized government; that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of which she was a subject, and particularly to the Union of Soviet Socialist Republic. This statement was made in her petition for naturalization;

(c) That she would support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion. This statement was made in open court in Oath of Allegiance, more fully set out in paragraph 5;

5. That on or about January 24, 1938, the said Rebecca Maisenberg took an oath of allegiance to the United States in open court which reads as follows:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely and without any mental reservation or purpose of evasion: So Help Me God."

[fol. 4a] whereupon the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, relying upon the truth and good faith of the representations made by the said Rebecca Maisenberg, in her petition for citizenship, and other Immigration and Naturalization forms required of a petitioner for naturalization, and in her oral testimony before the Naturaliza-

tion Examiner, granted the prayer in her petition and entered its order admitting her to citizenship of the United States, and thereupon Certificate of Naturalization No. 4333671 was issued to her by the Clerk of the Court;

6. That the representations aforesaid made by the said Rebecca Maisenberg in, her petition for citizenship and other naturalization forms required of an applicant for citizenship before the Naturalization Examiner, as well as the oath which she took as described above, were false and untrue, and at the time of making said representations and taking said oath said defendant knew that they were false and untrue, in that the said defendant concealed the fact that she was a member of and affiliated with the Communist Party of the United States from the year 1930 until the date of her naturalization, and the Communist Party of the United States was an organization which during the years from 1930 to 1938, inclusive:

- (a) Advised, advocated, or taught the overthrow by force and violence of the government of the United States;
- (d) Advised, advocated, or taught sabotage; propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;
- [fol. 5a] (c) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;
- (b) Advised, advocated, or taught the duty, necessity, or
- (e) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in their possession for the purpose of circulation, distribution, publication, issuing, or display, written or printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 6(a) (b) (c) and (d);
- (f) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics;

That during the years 1930 to 1938, inclusive, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subject of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such international organization were binding upon other Communist parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not;

That the said Rebecca Maisenberg, at all of the times above mentioned, was familiar with and approved of the activities, aims, and teachings of the Communist Party, as set forth above;

7. That at all times since 1930 to the date of her naturalization and even thereafter, the said Rebecca Maisenberg bore allegiance to the Third Communist International and to the Union of Soviet Socialist Republics; that at the time of her admission to United States citizenship the said [fol. 6a] Rebecca Maisenberg did not intend to renounce or abjure her allegiance to the said Third Communist International or the Union of Soviet Socialist Republics, but, on the contrary, intended to retain her allegiance to such organization and to such foreign power;

8. That the said Rebecca Maisenberg deliberately and intentionally testified falsely in the course of her naturalization proceeding, and concealed the material facts as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that her petition be granted; to preclude inquiry by the Court concerning her qualifications for citizenship; and to procure naturalization in violation of law;

9. That the United States Attorney instituted this proceeding upon the certificate of Reuben Speiser, an attorney

for the Immigration and Naturalization Service, United States Department of Justice, showing good cause therefor, which affidavit is attached hereto and made a part hereof;

10. That the said order of admission to citizenship and certificate of naturalization for said Rebecca Maisenberg were procured by concealment of material facts and by willful misrepresentation in that, contrary to her allegations set forth in paragraph 4:

- (a) That she was not a person, during the period required by law and at the time she applied for and obtained citizenship, who was attached to the principles of the Constitution or well disposed to the good order [fol. 7a] and happiness of the United States inasmuch as she was during said period and at the time of naturalization an active member of the Communist Party of the United States, an organization which, to her knowledge, espoused the aims, objectives and programs more particularly set forth in paragraph 6 above;
- (b) That despite her oath to the contrary, she did not intend to support the Constitution and laws of the United States and renounce all foreign allegiance that she did not take the obligation without mental reservation, inasmuch as she intended to and did retain allegiance to the Union of Soviet Socialist Republics;
- (c) That she was affiliated with the Communist Party of the United States, an organization teaching disbelief or opposition to organized government;

WHEREFORE, plaintiff prays that an order be entered in this cause revoking and setting aside the order heretofore entered admitting the said Rebecca Maisenberg to citizenship, upon petition No. 11166, and cancelling Certificate of Naturalization No. 4333671, heretofore issued to Rebecca Maisenberg, on the ground that same was procured by concealment of material facts and by wilful misrepresentation; and further ordering that said certificate shall be delivered and surrendered to the Clerk of the United States

District Court for the Eastern District of Michigan, and transmitted by him to the Commissioner of Immigration and Naturalization, Washington, D. C., and that the Clerk of this Court forthwith transmit a certified copy of this order to the Commissioner of Immigration and Naturalization, Washington, D. C.; and that the said defendant be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said certificate of [fol. 8a] naturalization or order admitting her to citizenship; and for such other and further relief as may be proper.

FRED W. KAESS
United States Attorney

DWIGHT K. HAMBORSKY
Assistant U. S. Attorney

AFFIDAVIT OF REUBEN SPEISER

UNITED STATES OF AMERICA)

) ss:

C-4333671

DISTRICT OF COLUMBIA . . .)

Reuben Speiser, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That one REBECCA MAISENBERG filed a petition for naturalization in the United States District Court at Detroit, Michigan, on October 22, 1937 and was admitted to citizenship by that court on January 24, 1938, receiving naturalization certificate No. 4333671.

(b) That in the proceedings which led to her naturalization, the said REBECCA MAISENBERG alleged under oath:

(I) That the only names ever used by her were Rebecca Rosenberg and Rebecca Maisenberg.

[fol. 9a] (II) That she fully believed in the form of government of the United States; and that she

did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was her intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the Union of Soviet Socialist Republics, of which she was a subject or citizen.

(IV) That she would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation freely without any mental reservation or purpose of evasion.

- (c) That the allegations of said Rebecca Maisenberg as set forth in subparagraph 1(c) were false and untrue.
- (d) That the said Rebecca Maisenberg has been an active member of the Communist Party of the United States since 1930; and, in connection with such membership had used and been known by the name of Rebecca or Rifka Lee.
- (e) That the Communist Party of the United States is an organization which at all times since 1930, as the said Rebecca Maisenberg well knew:
 - (I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;
 - [fol. 10a] (II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

- (III) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;
- (IV) Advised, advocated, or taught sabotage;
- (V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III, and IV;
- (VI) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, as the said Rebecca Maisenberg well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organizations were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions [fol. 11a] were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said Rebecca Maisenberg at the time she applied for and obtained naturalization: was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said Rebecca Maisenberg intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act (Public Law 414, 82nd Congress) to set aside and cancel the naturalization of said Rebecca Maisenberg as having been procured by concealment of material facts and [fol. 12a] by wilful misrepresentation.

3. That the last known place of residence of said Rebecca Maisenberg is 2493 West Philadelphia, Detroit, Michigan.

REUBEN SPEISER
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 10th day of March 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d. 1 of Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT T. REITZEL
Assistant General Counsel

[fol. 13a] MOTION PURSUANT TO RULE 9 OF THE
RULES OF CIVIL PROCEDURE

(Filed June 15, 1953)

Defendant moves that plaintiff be required to amend its Complaint so as to set forth in separate counts and with the particularity required by Rule 9, all averments of the

circumstances of the alleged fraud by defendant in obtaining naturalization as distinct from averments showing alleged illegal procurement of naturalization.

**MOTION FOR MORE DEFINITE STATEMENT PURSUANT
TO RULE 12(c) OF THE RULES OF CIVIL PROCEDURE**

Defendant moves as follows:

That plaintiff be required to file and serve upon defendant a more definite statement of its claim in the following particulars:

(a) A copy of the petition for naturalization described in paragraph 3. Defendant has no copy or present recollection of its contents and is therefore unable to answer said paragraph.

(b) A copy of the transcript, notes or other documents containing the alleged statements relied upon by plaintiff in paragraph 4. Defendant has no copy of any such documents nor any present recollection of any such statement and is therefore unable to answer this paragraph.

MOTION TO STRIKE AND FOR ALTERNATIVE RELIEF

The defendant moves the Court for an order to strike the following portion of the Complaint and the Supporting Affidavit filed herein, upon the ground that the same are irrelevant, contradictory and immaterial; and upon the further ground that said portions of the Complaint and [fol. 14a] Affidavit are highly prejudicial, not capable of proper cross-examination thereon and will tend to embarrass the defendant in the preparation and presentation of his defense:

1. Those portions of Paragraphs C, D, E and F under paragraph 6 of the Complaint which allege that the defendant and the Communist Party, during the period from 1919-1931, advised, advocated or taught the unlawful destruction of property, sabotage, the writing and circulating of literature advocating such unlawful destruction of property and sabotage and the promotion and advancement of political activities, public relations and public policy of the Union of Soviet Socialist Republics. Defendant alleges that

such allegations were not encompassed nor included in the naturalization law applicable at the time of defendant's naturalization.

2. Similar allegations as those mentioned in paragraph 1 above which appear in sub-paragraphs III, IV, V and VI of paragraph 1(e) of the affidavit of Reuben Speiser attached to said Complaint. Defendant alleges that such allegations were not encompassed nor included in the naturalization law applicable at the time of defendant's naturalization.

3. Those portions of paragraphs 6 and 9 of the Complaint and paragraph 1 of the Affidavit of Reuben Speiser which relate to the Union of Soviet Socialist Republics and to "an international organization" and/or "the Third Communist International." Defendant alleges insofar as said allegations are intended to show allegiance by the defendant to an international organization known as the "Third Communist International," they are immaterial because there is no showing that the Third Communist International was a foreign government within the meaning of the naturalization law in effect at the time of the defendant's naturalization.

And, in the alternative, defendant moves, pursuant to Rules 12(E) and Rule 34 of the Rules of Civil Procedure for the following alternative relief:

As to affidavit of Reuben Speiser attached to Complaint; said affidavit is alleged to be based, in its entirety, upon and to set forth facts appearing from, "official records" of the Immigration and Naturalization Service. With respect to those portions of the affidavit which relate to alleged teaching, advocacy and publications of the Communist Party, the political activities, public relations and public policy of the Union of Soviet Socialist Republics, and the nature and character of the Third Communist International, defendant requests that plaintiff be required to amend said affidavit so as to set forth the following:

- (a) Identify and specify such records by name and date;
- (b) The period of time when such records were compiled and when such information first became known to plaintiff;

(c) The statutory authority by which such records were compiled, maintained and acquired status as "official records" of the Immigration and Naturalization Service;

and further, that plaintiff be required, pursuant to Rule 34 of the Federal Rules of Civil Procedure, to produce and permit the inspection, copying or photographing of such official records.

GOODMAN, CROCKETT, EDEN & ROBB

By ERNEST GOODMAN
Attorney for Defendant
3220 Cadillac Tower
Detroit 26, Michigan
Woodward 3-6268

Dated: June 16, 1953

[fol. 16a] ANSWER TO COMPLAINT TO CANCEL CITIZENSHIP
(Filed January 14, 1955)

Now COMES REBECCA MAISENBERG, defendant herein by her attorneys, GOODMAN, CROCKETT, EDEN & ROBB and in answer to the Complaint herein, says:

1. Answering Paragraph One (1) of the Amended Complaint, defendant admits the allegations contained therein.
2. Answering Paragraph Two (2) of the Amended Complaint, defendant admits the allegations contained therein.
3. Answering Paragraph Three (3) of the Amended Complaint, defendant admits the allegations contained therein.
4. Answering Paragraph Four (4) of the Amended Complaint, defendant admits the allegations contained therein.
5. Answering Paragraph Five (5) of the Amended Complaint, defendant admits the allegations therein contained, except that defendant has no knowledge as to the factors upon which the United States District Court relied in grant-

ing her citizenship and therefore neither admits nor denies the allegation that the United States District Court relied upon the true and good faith of defendant's representations, and leaves plaintiff to its proofs.

6. Answering Paragraph Six (6) of the Amended Complaint, defendant denies the allegations contained therein.

7. Answering Paragraph Seven (7) of the Amended Complaint, defendant denies the allegations contained therein.

8. Answering Paragraph Eight (8) of the Amended Complaint, defendant denies the allegations contained therein.

[fol. 17a] 9. Answering Paragraph Nine (9) of the Amended Complaint, defendant has no knowledge as to whether the United States Attorney instituted this proceeding on the certificate of Reuben Speiser and therefore neither admits nor denies said allegation but leaves plaintiff to its proofs. Defendant denies that the affidavit attached to the complaint shows good cause for the institution of this proceeding. Defendant denies that said affidavit is properly a part of the complaint and shows that said affidavit is not based upon the personal knowledge of the affiant but upon hearsay, and moves that said affidavit of the affiant be stricken from the Amended Complaint.

10. Answering Paragraph Ten (10) of the Amended Complaint, defendant denies the allegations contained therein.

11. Further answering said Amended Complaint, defendant avers—

(a) That Section 340(a) of the Immigration and Nationality Act upon which said Amended Complaint is based, on its face and as applied to this defendant deprives her of rights guaranteed to her under the First and Fifth Amendments to the Federal Constitution, that it constitutes ex post facto legislation and is therefore unconstitutional.

(b) This Court has no jurisdiction by reason of the insufficiency of the affidavit attached to the Complaint

as provided by Section 1451(a), Title 8, U.S. C. A. and under Rules 8, 9(b) and 10(b) of the Federal Rules of Civil Procedure.

[fol. 18a] Defendant therefore denies that plaintiff is entitled to any relief whatsoever in the premises and moves that the Amended Complaint be dismissed.

GOODMAN, CROCKETT, EDEN & ROBB

By Ernest Goodman

Attorneys for Defendant
3220 Cadillac Tower
Detroit 26, Michigan
WO 3-6268

Dated: JANUARY 12, 1955

STIPULATION

(Filed January 21, 1955)

IT IS HEREBY STIPULATED AND AGREED by and between Rebecca Maisenberg, the defendant herein, acting by her attorney, Ernest Goodman, and Fred W. Kaess, United States Attorney for the Eastern District of Michigan, by Dwight K. Hamborsky, Assistant United States Attorney for said district, that for the purpose of these proceedings and these proceedings only:

1. That if John Lautner were to testify in these proceedings he would testify that he was an active member and functionary of the Communist Party of the United States from November 1929 to about January 1950;
2. That if Frank Meyer were to testify in these proceedings he would testify that he was an active member and [fol. 19a] functionary of the Communist Party of the United States from 1934 through 1945;
3. That if called as witnesses to testify in this proceeding John Lautner and Frank Meyer would testify that it was their understanding, on the basis of their membership, training, experience, and activities in the Communist Party of the United States and on the basis of the documents,

pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, that during the entire period of their membership the Communist Party of the United States advocated, taught, and advised the overthrow of the government of the United States by force and violence;

4. That if both John Lautner and Frank Meyer were to testify in these proceedings they would testify that the following literature was circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period from 1930, until the termination of their membership in the Communist Party of the United States:

- (a) "The Communist Manifesto", by Carl Marx and Frederick Ingals, by International Publishers, Inc.;
- (b) "State and Revolution", by V. I. Lenin, copyrighted 1932 by International Publishers, Inc.;
- (c) "Left Wing Communism and Infantile Dis-order", by V. I. Lenin, copyrighted by International Publishers, New York, 1940;
- (d) "Program of the Communist Internationale", [fol. 20a] copyrighted by Workers Library Publishers in 1929, third edition printed in February 1936;
- (e) "Foundations of Leninism", by Joseph Stalin, copyrighted in 1939 by International Publishers, Inc.;
- (f) "The Communist Party: A Manual on Organization", by J. Peters, published in 1935 by the Workers Library Publishers;
- (g) "The Struggle Against Imperialist War and the Tasks of the Communists", published by the Workers Library Publishers, second edition of July 1934;
- (h) "Why Communism", by M. J. Olgin, published by Workers Library Publishers, December 1933;
- (i) "Why every worker Should Join the Communist Party", published by Workers Library Publishers, Inc., no printing date being shown;

(j) "Problems of Leninism", by Joseph Stalin, copyrighted in 1934 by International Publishers Company, Inc.;

(k) "The Ultimate Aim", copyrighted in 1935 by International Publishers Company, Inc.;

(l) "Report to the Eighth Convention Communist Party", by Earl Browder, 1934, published by Workers Library Publishers;

(m) "Resolutions of the Seventh Congress of the Communist Internationale", published in 1935, Workers Library Publishers;

(n) "The Twenty-One Conditions of Admission into [fol. 21a] the Communist Internationale", by O. Piatnitsky, published by Workers Library Publishers, published February 1934.

5. That the testimony of John Lautner and Frank Meyer as contained in paragraphs 1, 2, 3 and 4, shall be incorporated into and made a part of these proceedings to the same effect as if they had testified personally in these proceedings;

6. That copies or photo off-set copies of the literature identified by the witnesses in paragraph 4 as having been circulated, distributed, printed or published by the Communist Party of the United States, shall be incorporated into and made a part of the record of these proceedings as exhibits to the same effect as if identified and introduced as exhibits in these proceedings and marked as Government exhibits 3-A through 3-N, inclusive.

FRED W. KAESZ
United States Attorney

By Dwight K. Hamborsky
DWIGHT K. HAMBORSKY
Assistant U. S. Attorney
Attorneys for Plaintiff

GOODMAN, CROCKETT, EDEN & ROBB
By Ernest Goodman
Attorneys for Defendant.

Date: Jan. 21, 1955



I, Mrs. / REBECCA MAISNERED, resident
 Detroit, Wayne, Michigan,
 United States District Court at Detroit,

6703 Brush Street,

do hereby file petition for naturalization in the
 Michigan, in accordance with
 the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of
 which I have signed, and my declaration of intention (first paper), if one is required.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must
 secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and enclose
 money order No. 9018 in the sum of \$2.80 made payable to the order of the "Commissioner of Immigration
 and Naturalization, Washington, D.C." in payment for the certificate of my arrival.

I arrived in the United States through the port of New York,
 under the name of Rebecca Rosenberg,
 on the vessel SS. Birma, Russian American Line

New York,

New York,
 Sept. 2nd, 1912

Additional facts to aid in locating a record of my arrival:

- I have yes used another name in this country than that given above. (If no) It was Rebecca Rosenberg. I used that name because It is my married name, name of my husband.
- The full name of the person shown on my steamship ticket was Rebecca Rosenberg.
- I was born in Zitomar, Russia. MARCH 11, 1891
- My father's full name is Morris Rosenberg.
- My mother's maiden name was Celia Goldimond.
- (If a married woman) My maiden name was Rebecca Rosenberg. JUL 7
- My last foreign residence was Zitomar, Russia.
- The place where I took the ship or train which landed me in the United States was Libau, Latvia.
- The ticket on which I came to this country was bought at prepaid steamship ticket sent to me from London.
- (If arrival by ship) Name of steamship line was Russian American Line (New York, U.S.)
 first, second, or third cabin third cabin. I arrived as a passenger, slow way, as there was no room for me otherwise.
 as a passenger.
- I traveled on (an immigration visa, a passport, or permit to enter) Passport (mother's)
- My original Immigrant Identification Card No. none is herewith attached. It is not with me, it has now
 none issued then to me.
- I paid 5.00 head tax at none required them for me, I believe, I came with my mother.
- I was not examined by United States Immigration officer at New York, New York.
- (If not examined) state why, and give the circumstances of my entry none.
- The person in the United States to whom I was coming was my father, Morris Rosenberg.
- The place in the United States to which I was going was New York, New York.
- The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are
my mother, Celia Rosenberg, my sister, Eva and my two brothers, Saul and Leo.

I was previously in the United States from never in the U. S. previously.

[fol. 23a]

(2)

2

I have set forth below my answers to the following questions asked of me:

14. Have you been absent from the United States since the date of your arrival as stated on page 1 of this form? **NO** **YES**
 If so, state month and year you left. **NO** **YES** If so, state month and year you returned. **NO** **YES**
 To what country did you go? **NO** **YES** For what reason? **NO** **YES**
 Is this the only time you have been out of the United States? **NO** **YES**
 If not, give full particulars as to other absences. **NO** **YES**

20. In what places in the United States have you resided?

New York, **New York**, From **September** **1912** to **March**, **1926**

Detroit, **Michigan**, From **March**, **1926** to **present date**.

21. What were the names and addresses of your employers during the two years immediately prior to the date of this statement?

Housenwife, **also in Business for my self**. (1926-1932)

Dress, and Hat Shop at **13806 Woodward Ave., Detroit, Michigan.**

22. Do you understand the principles of government of the United States? **YES**
 23. Do you fully believe in the form of government of the United States? **YES**
 24. Are you ready to answer questions as to the principles and form of government of the United States? **YES**
 What have you done to prepare yourself for an examination on the government of the United States? **Studied and read about citizenship and government at home.**
 25. Have you read the following oath of allegiance? **YES**

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to **Russia**, of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and Laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help me God.

Are you willing to take this oath in becoming a citizen? **YES**
 26. If necessary, are you willing to take up arms in defense of this country? **YES**
 Did you claim exemption from the draft during the World War because you were an alien? **NO**
 Did you surrender your declaration (first paper) at that time? **NO**
 27. If not now married, have you ever been married? **now married** Are you divorced? **NO**

Dresses, and Hat Shop at

13806 Woodward Ave., Detroit, Michigan.

22. Do you understand the principles of government of the United States? **yes**
23. Do you fully believe in the form of government of the United States? **yes**
24. Are you ready to answer questions as to the principles and form of government of the United States? **yes**

What have you done to prepare yourself for an examination on the government of the United States?

Studied and read about citizenship and government at home.

25. Have you read the following oath of allegiance? **yes**

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to Russia, of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help me God.

Are you willing to take this oath in becoming a citizen? **yes**

26. If necessary, are you willing to take up arms in defense of this country? **yes**

Did you claim exemption from the draft during the World War because you were an alien?

Did you surrender your declaration (first paper) at that time?

27. If not now married, have you ever been married? **now married** Are you divorced? **no**

Are you a believer in the practice of polygamy? **no**

28. Are you a believer in anarchy? **no** Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? **no**

29. Have you ever been an inmate of an insane asylum? **no**

30. Have you ever been dependent upon public charity? **no**

31. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? **no** If so, give full particulars **none**

32. (a) In what place in the United States did you meet for the first time your first witness named on the opposite page?

How often have you seen this witness each month since the date you first met him (her)?

At what places?

(b) In what place in the United States did you meet for the first time your second witness named on the opposite page?

How often have you seen this witness each month since the date you first met him (her)?

At what places?

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

~~The above certifications~~

No. 98514

11-10-1941

Ward 1400 at 8:00-9:00

Mrs. Rehica Rosenberg
Signature of applicant

8705 Brush Street, Detroit, Michigan.

Rehica Rosenberg

[fol. 24a]

TRIPLET (1)
(To accompany
monthly report on
Form 2288)

UNITED STATES OF AMERICA
PETITION FOR NATURALIZATION

To W. H. Murray, M. D.

Biography

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(1) My place of residence is **8708 Birch St., Batavia, Illinois** (2) My occupation is **Proprietor**
(3) I was born in **Illinoian, Indiana** on **March 1, 1893** (4) My age is **26**
(5) Length of time in present place of residence **10 months** (6) Omitted under Act of Congress is **united**

(8) I am married. The name of my wife or husband is **Joseph Plotter**.
we were married on **June 4, 1917** at **New York, N.Y.** He was
born at **Altman, Illinois** on **July 20, 1898** and entered the United States
at **New York, N.Y.** on **June 2012** for permanent residence therein, and now
resides at **1000 University Street, Detroit, Michigan**. I have **1** children, and the name, date,
birth **December 14, 1918** at **New York, N.Y.** Detroit, Michigan
with me.

(8) My last foreign residence was Siltemer, Russia. I emigrated to the United States of America from Latvia, Russia. My lawful entry for permanent residence in the United States was at New York, N. Y., under the name of Rivka Schwartzberg on August 10, 1913, in the vessel SS Bremen.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to

of whom (which) at this time I am a citizen of the United States. (N) I am able to speak the English language (N) I have resided continuously in the United States of America for the term of one year at least immediately preceding the date of this petition, to wit, since September 3, 1923..... and in the County of Wayne.....

this State, continuously next preceding the date of this petition, since _____ **March 1998** _____ being a residence within said county of at least six months next preceding the date of this petition.

(10) I have before the petition for Naturalization. Number, on at and such petition was denied by that Court for the following reasons and cause, to wit:

My lawful entry for permanent residence in the United States
was at New York, N. Y., under the name of Birke Holmberg
on September 3, 1912, on the vessel SS Bremen
as shown by the certificate of my entry attached hereto.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to

of whom (whom) at this time I am a citizen (resident), with my principal place of abode, in the United States. (N) I am able to speak the English language. (O) I have resided continuously in the United States of America for the term of three years at least immediately preceding the date of this petition, to wit, since

September 3, 1913 and in the County of Marquette.

this State, continuously next preceding the date of this petition, since **March, 1906** being a residence within and away of at least six months next preceding the date of this petition.

(10) I have before/never made petition for Naturalisation. Number Court, on and such petition was denied by that Court for the following reasons and cause, to wit:

and the cause of such dead hospitals have been cured or removed.

Attest: I certify and make a part of this, my petition for citizen ship, the following certificate, certifying from the Department of Labor of my said arrival, and the affidavits of the two verifying witness required by law.
Wherefore, I, aforesaid, now say, that I may be admitted a citizen of the United States of America, and that my name be of record as

Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to.....

...and the **new** **designs** ...

I, your abore-mentioned petitioner being fully aware, deprecate and say that I have read and heard read this petition and knew the contents thereof; that the same is true of

my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true, and that this petition

is signed by me with my full, true name.

Rebecca Mairenleay

• (Signatures and true signatures of witnesses.)

AFFIDAVITS OF WITNESSES

General Stores....., in telephone 844
residing at 2040 Casselwood Ave., Detroit, Michigan

... occupation: **Conservator**
That he is a citizen of the United States of America; that he has personally known and has been
resident in the United States with

the State, in which the above-entitled petition is made, continually since Oct. 3, 1878, and that he has personal knowledge that the petitioner is and during all such periods has been a person of good moral character, affirms in the principles of the Constitution of the United States, and well disposed to the good order and law places of the United States, and that in his opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

Paul Bearer (Signature of witness) Stanley Parker (Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witness in the office of the Clerk of the Court at Detroit, this 28th day of October, Anno Domini 1937. I hereby certify that certificate of arrival No. 8-138233

..... John J. O'Farrell, has been by me filed with, attached to, and made a part of this petition on this date.

[fol. 25a]

Eisenberg, M. D.C.

705 Gratiot

Detroit, Michigan

ADJOURNMENTS

FROM	TO	REASONS
		Grant
		8

FINAL HEARING

ADMITTED ON	
Date:	10/2/66
Grounds:	
Examiner	Rice

RESULT OF EXAMINATION
 C/ shows Kivke, which could be translated as
 keboco.

Ability Russian
 S. since 5/2/10

15-35-5-111
 1/2
 991166

C/ shows Kiwke, which could be translated as
Rebecca.

99/11/11

10-3002
1. Nationality Russian _____
2. S. since 1/2/13 _____
3. Nationality " 1926 _____
4. Last U. S. No. _____
5. Single, Married 1/1/13
OK _____
6. Last City OK _____
7. Party No _____
8. Arrests 10 _____
9. Fines 1.0 _____
10. In Jail No _____
11. Born _____
12. Examiner Ben J. Chapman _____
13. Date 1/9/13 _____

Witness Robert Samuel

Officer Robert Samuel W-Form 10-4/9/13

Knows I et al 1/2/13

14. WTR in poach 1/2/13
except 1/12 Jan 1931 to May 1933
when vis. Soviet Russia

15. Corp Robert Samuel

16. Recd by Robert Samuel

17. Stock M.F.



[fol. 26a]

OPINION

(Entered August 11, 1955)

This is an action to cancel defendant's certificate of naturalization on two grounds (1) concealment of a material fact, and (2) wilful misrepresentation.

The proof is similar to that found in the case of U. S. v. Nowak decided July 15th, 1955 by this court, and the court finds that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship.

However, there is one issue raised herein not present in any previous case. Defendant claims that this action should be dismissed because the government, before bringing an [fol. 27a] action to cancel defendant's citizenship, should have filed a proper affidavit showing "good cause" as provided in §1451(a), Title 8, USC. Such an affidavit presumably in compliance with the law was admittedly filed but defendant contends that it was not sufficient.

On this point, we hold that the affidavit is sufficient.

The affidavit declares that the statements therein are taken from the official records. Defendant's counsel contends that the affidavit should contain a statement to the effect that the person making the affidavit had a belief in the truthfulness of the statements therein, and that the record that was being cited was true and correct.

To begin with, there is a presumption that recorded acts of government officials and general records are regular (*LaPorte v. Bitker*, 145 F2d 445), a presumption which can be overcome only by clear evidence to the contrary (*Reines v. Woods*, 192 F2d 83). While it does not appear probable under these circumstances that an attorney making an affidavit would purposely misquote the record, it is possible, and defendant should have the opportunity to make an examination and to check those records, but the presumption still remains in favor of their accuracy. See *U. S. v. Leles*, 227 Fed 189; *Turlej v. U. S.*, 21 F2d 696.

In addition, here the government went further than the law required. The wording of the law is that the affidavit must show "good cause"—that's all; here the affidavit not only said there was "good cause" which is sufficient (*Schwinn v. U. S.*, 112 F2d 74) but it referred to many statements allegedly appearing in the official records to [fol. 28a] show on what this "good cause" was based.

Defendant's citizenship will be cancelled upon submission of the proper order.

/s/ **FRANK A. PICARD**
U. S. District Judge

Dated: August 11, 1955.

ORDER OF CANCELLATION

At a session of said Court held in the Federal Building, at Detroit, Michigan, this 12th day of August, 1955.

Present: **HONORABLE FRANK A. PICARD**
United States District Judge

Upon the records and files of the above action and from a full hearing in open court, and in accordance with the opinion filed August 11th, 1955, and on motion of Dwight K. Hamborsky, Assistant United States Attorney for the Eastern District of Michigan,

IT IS ORDERED, ADJUDGED AND DECREED that the order of this Court entered on January 24, 1938, admitting the defendant Rebecca Maisenberg as a citizen of the United

States of America, be and the same is hereby revoked, set aside and declared void, and that the Certificate of Naturalization No: 4333671, issued by virtue of said order of January 24, 1938, be and the same is hereby cancelled and held to be null and void, and

[fol. 29a] **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Clerk of this Court transmit to the Immigration and Naturalization Commissioner at Washington, D. C., a certified copy of the judgment, order and decree, together with the original certificate of naturalization of the defendant, if in his possession; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant Rebecca Maisenberg be and she is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits or advantages whatsoever under said order of January 24, 1938, or under the Certificate of Naturalization No. 4333671 issued by virtue of said order.

/s/ **FRANK A. PICARD**
District Judge